

**A Koh Hee Meng v Menteri Sumber Manusia, Malaysia
& Anor**

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R3-25-
1 OF 1997

B NIK HASHIM J
28 OCTOBER 1998

Labour Law — Industrial Court — Discretion of Minister — Applicant dismissed from service for misconduct — Minister refused to refer applicant's representations to Industrial Court — Whether Minister was right in refusing to refer dispute to Industrial Court — Whether dismissal was justified — Whether applicant punished twice for same offence

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The applicant took a trip to Australia and was absent from work without the necessary permission from his employer ('the company'). He was dismissed from service by the company after he was found guilty in a domestic inquiry for misconduct of a very serious nature indicating gross and wilful insubordination. Dissatisfied with the company's decision, the applicant filed representations under s 20 of the Industrial Relations Act 1967 ('the Act'). The Minister of Human Resources ('the Minister') informed all the parties that he had decided that the applicant's representations were not fit for reference to the Industrial Court. Subsequent to this, the applicant applied for an order to quash the Minister's decision not to refer his case to the Industrial Court and an order of mandamus ordering the Minister to refer the same to the Industrial Court for adjudication, pursuant to O 35 of the Rules of the High Court 1980.

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In his application, the applicant contended that the Minister had failed: (i) to take into account whether the domestic inquiry was improper and/or defective; (ii) to consider or to give due weight to the legality and justification for the applicant's dismissal; and (iii) that he was punished twice for the same offence. The respondents in opposing the application submitted that the Minister had carried out his duty lawfully and properly and had taken into account all necessary considerations in arriving at his decision. Thus, the Minister's decision was in accordance with the law and he did not exceed his jurisdiction in any manner.

Held, dismissing the application:

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(1) The court held that the Minister was right when he refused to refer the matter to the Industrial Court. He had exercised his discretion correctly according to the scheme and intention of the Act, after a thorough scrutiny of all relevant facts before him and find that the matter was not a fit and proper one to be referred. The court was also of the view that on the facts, the case did not point overwhelmingly in favour of a different decision and neither did the facts disclose serious questions of facts or law that required adjudication (see pp 111H and 112A-B).

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- (2) With regard to the applicant's complaint that the Minister had failed to take into account whether the domestic inquiry was improper and/or defective, it was to be noted that the Minister had taken note of the fact that the domestic inquiry was held on 25 November 1996. The Minister did not say whether the domestic inquiry was improper or defective. The applicant did not raise this matter at all in his affidavit, statement filed or in the 'notis usul terpinda'. The allegation was only made for the first time when the applicant filed his written submission. It is trite that the applicant cannot raise an issue which has never been pleaded (see p 112F-G).
- (3) A perusal of the notes of evidence recorded at the domestic inquiry would show that the inquiry was properly conducted and the applicant was given every opportunity to defend himself. Moreover, the applicant could not challenge the authenticity of the notes as he had signed on every page of them to confirm their accuracy (see p 112H).
- (4) On the facts, the applicant clearly went to Australia without the permission of his superiors. The misconduct committed by the applicant showed that he disobeyed the instructions of his superiors and this indicated that the applicant had committed a wilful act of insubordination which justified nothing less than the punishment of dismissal from service (see pp 112I and 113A-B).
- (5) There was no such evidence before the court that the applicant was in fact punished twice for the same offence. A mere indication of the type of the punishment that may be imposed on the applicant is not the same as imposing the said punishment (see p 113B-C).

[Bahasa Malaysia summary]

Pemohon telah membuat perjalanan ke Australia dan tidak hadir untuk kerja tanpa kebenaran yang perlu daripadanya ('syarikat tersebut'). Dia telah dipecat dari perkhidmatan oleh syarikat tersebut setelah ia didapati bersalah dalam siasatan domestik, untuk salah laku yang amat serius yang menunjukkan pengingkaran melampau dan disengajakan. Pemohon, yang tidak puas hati dengan keputusan syarikat tersebut, telah memfailkan representasi di bawah s 20 Akta Perhubungan Perindustrian 1967 ('Akta tersebut'). Menteri Sumber Manusia ('Menteri') telah memaklumkan kepada semua pihak bahawa beliau telah memutuskan bahawa representasi pemohon tidak wajar untuk dirujuk kepada Mahkamah Perusahaan. Berikutnya, pemohon memohon untuk satu perintah bagi membatalkan keputusan Menteri untuk tidak merujuk kesnya kepada Mahkamah Perusahaan dan satu perintah mandamus Menteri supaya merujuk kes tersebut kepada Mahkamah Perusahaan untuk penghukuman, menurut A 35 Kaedah-Kaedah Mahkamah Tinggi 1980.

- A** Dalam permohonannya, pemohon berhujah bahawa Menteri telah gagal: (i) mengambil kira sama ada siasatan domestik adalah tidak wajar dan/atau tidak sempurna; (ii) untuk mempertimbang atau memberikan kepentingan kepada keesahan dan justifikasi untuk pemecatan pemohon; dan (iii) bahawa ia dihukum dua kali untuk kesalahan yang sama. Dalam menentang permohonan tersebut,
- B** penentang-penentang menghujahkan bahawa Menteri telah melaksanakan kewajipannya secara sah dan dengan sewajarnya dan telah mengambil kira segala pertimbangan yang perlu dalam mencapai keputusannya. Justeru itu, keputusan Menteri adalah menurut undang-undang dan beliau tidak melampaui bidang kuasa dalam apa-apa cara.
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Diputuskan, menolak permohonan:

- (1) Mahkamah memutuskan bahawa Menteri adalah betul ketika beliau enggan merujuk perkara itu kepada Mahkamah Perusahaan. Beliau telah melaksanakan budi bicaranya dengan betul menurut skim dan hasrat Akta tersebut, selepas penelitian yang menyeluruh ke atas segala fakta relevan di hadapannya dan mendapati bahawa hal tersebut bukanlah suatu kes yang wajar untuk dirujuk. Mahkamah juga berpandangan bahawa atas fakta-fakta, kes ini tidak menunjukkan memihak kepada keputusan yang berlainan dan tidak juga mendedahkan persoalan fakta atau undang-undang serius yang menghendaki penghukuman (lihat ms 111H dan 112A–B).
- D**
- (2) Berhubung dengan aduan pemohon bahawa Menteri telah gagal mengambil kira sama ada siasatan domestik adalah tidak wajar dan/atau tidak sempurna, hendaklah diperhatikan bahawa Menteri telah mengambil perhatian tentang hakikat bahawa siasatan domestik telah diadakan pada 25 November 1996. Menteri tidak mengatakan sama ada siasatan domestik adalah wajar atau tidak sempurna. Pemohon tidak membangkitkan hal ini sama sekali dalam afidavitnya, pernyataan yang difailkan atau dalam notis usul terpinda. Tohmahan itu hanya dibuat buat kali pertama apabila pemohon memfailkan penghujahan bertulis. Adalah mantap bahawa pemohon tidak boleh menimbulkan isu yang tidak pernah dihujahkan (lihat ms 112F–G).
- E**
- (3) Suatu penelitian nota-nota keterangan yang direkodkan di siasatan domestik akan menunjukkan bahawa siasatan dijalankan dalam cara yang wajar dan pemohon telah diberikan peluang untuk membela dirinya. Tambahan pula, pemohon tidak boleh mencabar ketulenan nota-nota tersebut kerana ia telah menandatangani setiap halaman untuk mengesahkan kejituannya (lihat ms 112H).
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- I** (4) Atas fakta-fakta, pemohon jelas telah pergi ke Australia tanpa keizinan pegawai atasannya. Salah laku perbuatan pemohon menunjukkan bahawa ia telah mengingkar arahan pegawai

atasannya dan ini menunjukkan bahawa pemohon telah melakukan perbuatan pengingkaran yang disengajakan yang memberi justifikasi kepada hukuman pemecatan dari perkhidmatan (lihat ms 112I dan 113A–B).

- (5) Tiada keterangan sedemikian di hadapan mahkamah bahawa pemohon memang telah dihukum dua kali untuk kesalahan yang sama. Sekadar menunjukkan jenis hukuman yang boleh dikenakan ke atas pemohon tidak sama dengan mengenakan hukuman tersebut (lihat ms 113B–C).]

Notes

For cases on Minister's discretion to refer dispute to Industrial Court, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 938–939.

Cases referred to

Amanah Butler (M) Sdn Bhd v Yike Chee Wah [1997] 2 AMR 1653 (refd)

Hong Leong Equipment Sdn Bhd v Liew Fook Chuan & another appeal [1996] 1 MLJ 481 (refd)

Michael Lee Fook Wah v Minister of Human Resources Malaysia & Anor [1998] 1 MLJ 305 (folld)

Minister of Labour, Malaysia v Chan Meng Yuen and another appeal [1992] 2 MLJ 337 (refd)

Minister of Labour, Malaysia v Lie Seng Fatt [1990] 2 MLJ 9 (refd)

National Union of Hotel, Bar & Restaurant Workers v Minister of Labour and Manpower [1980] 2 MLJ 189 (refd)

Rama Chandran v The Industrial Court of Malaysia [1997] 1 AMR 433 (refd)

Legislation referred to

Industrial Relations Act 1967 s 20(3)

Rules of the High Court 1980 O 53

S Muhendaran (Murugavell Arumugam & Co) for the applicant.

Mahamad Naser bin Disa (Senior Federal Counsel) for the first respondent.

P Jayasingam (Albar Zulkifly & Yap) for the second respondent.

Nik Hashim J:

The application

The applicant in this case applied for an order of certiorari to quash the Minister of Human Resources' ('the Minister') decision not to refer the applicant's representations to the Industrial Court vide his letter dated 25 November 1996 and an order of mandamus ordering the Minister to

- A** refer the same to the Industrial Court for adjudication. This application is made pursuant to O 53 of the Rules of the High Court 1980.

The facts

- B** Briefly, the facts are that the applicant was first employed by Berita Information System Bhd as a senior manager of sales and marketing on 1 October 1992. The applicant was subsequently informed that his employment had been taken over by Bistech Sdn Bhd ('the company') with effect from 1 October 1992. Sometime in June 1995, the applicant sought the permission of En Khoo Sin Aik, the group general manager of the company, to make a visit to Australia from 6 to 10 July 1995. To enable the
- C** group general manager to consider the applicant's request, the group general manager required the applicant to produce the costing for the whole project and a letter from the prospective customer, Cincoms Systems (Singapore) Pte Ltd, to indicate that they would reimburse the company for the cost of the applicant's visit to Australia (paras 4.1 and 4.2 of encl 15).
- D** The applicant did not produce the costing of the whole project as required by the group general manager but handed him a letter dated 28 June 1995 from Cincoms Systems (Singapore) Pte Ltd which only indicated that they would bear the cost of air fare and accommodation in respect of the applicant's visit to Australia only if the company sent them
- E** the company's first purchase order for control manufacturing software and that the cost may be recovered by way of discount from the net value of the purchase order to Cincoms Systems (Singapore) Pte Ltd (exh 'BIS-1' of encl 15).

- F** As the applicant failed to produce the costing as required and that the costs of the applicant's visit to Australia was not without any conditions, the group general manager asked the applicant to pursue the matter with his general manager.

- G** By a memorandum dated 3 July 1995, the applicant attempted to obtain the approval of the general manager of the company (En Ahmad Kamil Abdullah) wherein he set out his estimated cost of the trip to Australia. En Ahmad Kamil Abdullah refused to approve the applicant's application on the grounds that the applicant was not able to produce a costing sheet to indicate margins and was not able to obtain a signed document from Cincoms Systems (Singapore) Pte Ltd on the reimbursement (para 5 of encl 14).

- H** The applicant also sought the permission of the general manager of Open Solutions Sdn Bhd (En Musa bin Lazim) to make the trip to Australia but was advised to seek the approval of the group general manager of the company (para 4 of encl 13).

- I** Despite failing to obtain the permission of En Ahmad Kamil Abdullah, En Musa bin Lazim and En Khoo Sin Aik, in direct disobedience of their instructions, the applicant proceeded to make the trip to Australia and was absent from work on 6, 7 and 8 July 1995 without the permission of the company or any of its officers.

Upon the applicant's return to work on 10 July 1995, the group general manager requested the applicant to provide him with an explanation on his conduct of making the trip to Australia without permission and for his absence from work on 6, 7 and 8 July 1995. At this meeting with the applicant, En Ahmad Kamil Abdullah and En Musa bin Lazim were present.

As the group general manager was not satisfied with the applicant's explanation, he indicated to the applicant that he could be reprimanded for his misconduct. However, the group general manager did not reprimand the applicant during the meeting with the applicant. The group general manager then issued a note to En Ahmad Kamil Abdullah to issue the applicant with a warning letter. However, upon the advice of the general manager of human resource and administration on the serious nature of the misconduct, it was decided that the matter should be taken over by the human resource and administration department for further action. It is to be noted that the instruction to En Ahmad Kamil Abdullah was never communicated to the applicant. The group general manager further denied he had issued any warning, be it verbal or in writing, on the applicant's misconduct at any point in time (encls 13, 14 and 15).

By a letter dated 13 July 1995, the human resource and administration department required the applicant to furnish his written explanation on his conduct by 19 July 1995. By a letter dated 17 July 1995, the applicant furnished his explanation as required (encl 15).

As the applicant's explanation was not satisfactory, vide a letter dated 19 July 1995, the applicant was required to attend a domestic inquiry on 25 July 1995 to answer to two allegations of misconduct levelled against him, namely proceeding to Australia without permission and absence from work on 6, 7 and 8 July 1995 without lawful authority. The inquiry proceeded as scheduled and the inquiry panel found the applicant guilty of both the allegations of misconduct. During the inquiry, notes were recorded. As the allegations of misconduct which the applicant was found guilty were of a very serious nature indicating gross and wilful insubordination, the company dismissed the applicant from service with immediate effect vide a letter dated 11 August 1995 (exh 'BIS-7' of encl 15).

Dissatisfied with the company's decision, the applicant filed representations under s 20 of the Industrial Relations Act 1967 ('the Act'). By a letter dated 25 November 1995, the Minister informed all the parties that he had decided that the applicant's representations was not fit for reference to the Industrial Court for adjudication. Hence this application.

The Minister's affidavit

The Minister in his affidavit affirmed on 28 May 1997 (encl 6), among other things, states the following:

- 5 Saya telah dimaklumkan oleh Ketua Pengarah Perhubungan Perusahaan akan maklumat-maklumat yang diperolehi semasa rundingan damai. Saya juga telah dimaklumkan dan dibekalkan dengan dokumen-

- A** dokumen yang berkaitan dengan representasi plaintif. Antara dokumen-dokumen tersebut adalah sebagaimana yang telah dilampirkan ekshibit-ekshibit 'KHM-4', 'KHM-5', 'KHM-6', 'KHM-7', 'KHM-8', 'KHM-9', 'RHM-10', 'KHM-11' dan 'KHM-13' di dalam affidavit plaintif (the applicant).
- B** 6 Saya juga telah dimaklumkan bahawa satu siasatan dalaman telah diadakan pada 25 Julai 1995 di mana plaintif telah diberi peluang untuk membuat representasi.
- 7 Saya juga telah dimaklumkan bahawa responden kedua (the company) di dalam siasatan dalaman itu telah mendapati perayu (the applicant) bersalah dan plaintif (the applicant) telah ditamatkan perkhidmatan beliau melalui surat bertarikh 11 Ogos 1995.
- C** 8 Saya juga telah dimaklumkan dan seterusnya saya telah mengambilkira fakta-fakta yang dinyatakan di dalam perenggan 32(a)-(g) affidavit plaintif. Oleh yang demikian, segala dakwaan plaintif bahawa saya telah gagal atau cuai mengambilkira fakta-fakta tersebut adalah dinafikan.
- 9 Setelah mengambilkira, mengkaji dan meneliti dengan mendalam segala maklumat-maklumat yang disebutkan di perenggan 5, 6, 7 dan 8 di atas, saya berpendapat dan berpuashati bahawa representasi plaintif adalah remeh dan menyusahkan dan adalah tidak wajar dirujuk kepada Mahkamah Perusahaan di bawah s 20(3) Akta Perhubungan Perusahaan.
- D** 10 ...
- 11 ...
- E** 12 Saya sesungguhnya menyatakan di dalam menjalankan budibicara yang diberikan di bawah s 20(3) Akta tersebut, saya telah bertindak berdasarkan kehendak dan kuasa yang diberi oleh undang-undang sesuai dengan semangat dan matlamat Akta tersebut untuk membuat keputusan secara adil, saksama dan bona fide.
- 13 ...
- F** 14 Saya juga menyatakan bahawa saya telah mempertimbangkan kesemua perkara-perkara yang dipertimbangkan dan sepatutnya mengenepikan perkara-perkara yang tidak sepatutnya dan berasaskan kepada semua butir-butir yang dikemukakan untuk dipertimbangkan dan penelitian saya, saya berpuashati bahawa representasi plaintif adalah remeh dan menyusahkan ('frivolous' dan 'vexatious') dan dengan itu tidak wajar untuk dirujuk kepada Mahkamah Perusahaan.
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The applicant's contention

Encik S Muhendaran for the applicant submitted broadly on two grounds, namely, that the Minister had failed:

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- (1) to take into account whether the domestic inquiry was improper and/or defective; and
 - (2) to consider or to give due weight to the legality and justification for the applicant's dismissal.

I *The respondent's contention*

On the other hand, En Mahamad Naser bin Disa, senior federal counsel for the Minister and En P Jayasingam for the company, in opposing the

application, submitted in effect that the Minister had carried out his duties lawfully and properly and taken into account all necessary considerations in arriving at his decision not to refer the applicant's dispute with the company to the Industrial Court for adjudication; further, his decision was in accordance with the law and he did not exceed his jurisdiction in any manner.

The issue

The issue before the court is whether the Minister was right in refusing to refer the dispute to the Industrial Court.

The law

In the most recent case on this issue, Shaik Daud JCA, delivering the judgment of the Court of Appeal in *Michael Lee Fook Wah v Minister of Human Resources Malaysia & Anor* [1998] 1 MLJ 305, in dismissing the applicant's appeal held at the head notes as follows:

In an application for an order of certiorari, the High Court is not sitting in its appellate jurisdiction but in its supervisory jurisdiction. The court is more concerned with the decision-making process and not the decision itself. The court should not readily question the administrative decision of the first respondent as that is his absolute discretion. Furthermore, the law does not require the first respondent to refer every matter to the Industrial Court. Section 20(3) of the Act confers a discretion on the first respondent whether to refer a complaint to the Industrial Court or not, which will depend on the facts and circumstances of each case. *The court will only interfere when it can be shown that the discretion was exercised unlawfully. A negative act, such as not referring the complaint to the Industrial Court, is equally an exercise of discretion.* On the facts of the case, the first respondent's discretion was exercised according to the scheme and intention of the Act, after a thorough study of all relevant material. The decision was fair and just and the court should not interfere (see pp 309D–E, I, 310A, C–D and 311C); *National Union of Hotel, Bar & Restaurant Workers v Minister of Labour and Manpower* [1980] 2 MLJ 189 followed. (Emphasis added.)

In the case of *National Union of Hotel, Bar & Restaurant Workers v Minister of Labour and Manpower* [1980] 2 MLJ 189, the Federal Court held at p 190 as follows:

This subjective formulation is sufficient in our opinion to show that the Minister has a discretion to determine the desirability or otherwise of a particular cause of action within the scope of the discretionary power. It is the exercise by him of the discretion vested in him, not in the courts, that we are here required to review, and when his action is challenged in the courts for alleged abuse of discretion, we are obliged to resist any temptation to convert our jurisdiction to review into a reconsideration of the merits as if on appeal. The underlying principle of judicial review have been stated in numerous cases, notably in *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223 (which concerned the powers of a local authority) and *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 (which concerned the powers of a Minister). Perhaps it would not be out of place to

A refer to a passage from the speech of Lord Diplock in the recent House of Lords case of *Duport Steels Ltd v Sirs* [1980] 1 WLR 142, which provides a timely reminder that it is the exercise by those in whom discretionary power is vested, not in the courts, that we are required to review.

In the leading case of *Minister of Labour, Malaysia v Chan Meng Yuen and another appeal* [1992] 2 MLJ 337, the Supreme Court, in allowing the appeal by the Minister, held at p 342 as follows:

B On these facts, we are of the view that the Minister acted reasonably in exercising his discretion not to refer the respondent's representations to the Industrial Court. *It certainly cannot be said that the facts point overwhelmingly in favour of a different decision.* (Emphasis added.)

C With regard to the Minister's exercise of the discretion under s 20 (3) of the Act, Gopal Sri Ram JCA in the Court of Appeal case of *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan & Anor* [1996] 1 MLJ 481 at p 519 observed:

D To summarize, when a question arises as to whether the Minister has correctly exercised his discretion under s 20(3) of the Act, it is the solemn duty of a court to undertake a meticulous examination of the facts that were made available to the Minister. If the examination reveals that the representations made under s 20(1) are neither perverse, frivolous nor vexatious, a decision not to refer is liable to be quashed by an order of certiorari.

E On the same page, the learned judge of the Court of Appeal continued to say:

F It follows from these decisions that the Minister must bear in the forefront of his mind that the Act has established a special tribunal to adjudicate upon a dispute arising from representations made under s 20(1) of the Act, and that it is therefore no part of his function to arrive at a concluded view upon the merits of the dispute. His role is limited to ascertaining whether, on the facts and material placed before him, the representations raise serious questions of fact or of law calling for adjudication. And, as I have already said, his determination upon the question one way or the other is not conclusive.

G I now proceed to apply the law as established by the above leading cases on the issue to the facts of this case.

The findings of the court

H Having given the above cases and the thorough submissions of both counsel my most serious consideration, I hold that the Minister was right when he refused to refer the matter to the Industrial Court. He had exercised his discretion correctly according to the scheme and intention of the Act, after a thorough scrutiny of all the relevant facts before him. However, the law does not require the Minister to refer every representation to the Industrial Court. Section 20(3) of the Act confers a discretion on the Minister whether to refer the complaint to the Industrial Court or not. The negative act of not referring this case to the Industrial Court by the Minister is equally an exercise of his absolute discretion (see *Michael Lee Fook Wah v Minister of Human Resources Malaysia & Anor* [1998] 1 MLJ 305). In this case, the

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Minister gave the reason why he did not refer the matter to the Industrial Court. The reason was that he considered the matter was not a fit and proper one to be referred. When arriving at this decision, he said in his affidavit that he had considered the facts that were made available during the conciliation meeting including exhs 'KHM-4' to 'KHM-11' and 'LHM-13' annexed to the applicant's affidavit. In my view, the facts of the case do not point overwhelmingly in favour of a different decision (see *Chan Meng Yuen*). Neither do the facts disclose serious questions of fact or of law that require adjudication (see *Hong Leong Equipment Sdn Bhd*). Indeed, the facts are straightforward. Thus, in the light of the above, the applicant's application is nothing more than a frivolous and vexatious application which the Minister rightfully and lawfully refused to refer to the Industrial Court for adjudication. In the case of *Minister of Labour Malaysia v Lie Seng Fatt* [1990] 2 MLJ 9, the Supreme Court at p 12 said:

The Minister's discretion under s 20(3) is wide but not unlimited. As stated earlier, so long as he exercises his discretion without improper motive, the exercise of discretion must not be interfered by the court unless he has mis-directed himself in law or had taken into account irrelevant matters or had not taken into consideration relevant matters or had not taken into consideration relevant matters or his decision militates against the object of the statute. Otherwise he had a complete discretion to refuse to refer a complaint which is clearly frivolous or vexatious which in our view this is one.

In the present case, it is quite clear from the Minister's affidavit that the Minister was not influenced by any improper motive or had not failed to take into account relevant considerations or had not taken into account irrelevant considerations or had not failed to take into account the objects and provisions of the Act.

With regard to the applicant's complaint that the Minister had failed to take into account whether the domestic inquiry was improper and or defective, it is to be noted that the Minister had taken note of the fact that the domestic inquiry was held on 25 November 1996. The Minister did not say whether the domestic inquiry was improper or defective. The applicant did not raise this matter at all in his affidavit, statement filed or in the 'notis usul terpinda' (encl 16). The allegation was only made for the first time when the applicant filed his written submission. It is trite that the applicant cannot raise an issue which has never been pleaded (see *Amanah Butler (M) Sdn Bhd v Yike Chee Wah* [1997] 2 AMR 1653; *Rama Chandran v The Industrial Court of Malaysia* [1997] 1 AMR 433. Be that as it may, a perusal of the notes of evidence recorded at the domestic inquiry will show that the inquiry was properly conducted and the applicant was given every opportunity to defend himself. Moreover, the applicant cannot challenge the authenticity of the notes as he had signed on every page of them to confirm their accuracy (exh 'BIS-6' of encl 15).

In respect of the applicant's second complaint that the Minister had failed to consider or to give due weight to the legality and justification for the applicant's dismissal, I hold that there is no basis for the complaint. The facts show clearly the applicant went to Australia without the permission of his superiors. In fact, the applicant does not deny that his trip to Australia

A was without the company's permission. The misconduct committed by the applicant shows that he disobeyed the instructions of his three superiors. This indicates that the applicant had committed a wilful act of insubordination which justifies nothing less than the punishment of dismissal from service.

B It is also the contention of the applicant that he was punished twice for the same offence. With respect, I agree with En P Jayasingam for the company that there is no such evidence before this court that the applicant was in fact punished twice for the same offence. A mere indication of the type of the punishment that may be imposed on the applicant is not the same as imposing the said punishment.

C *The conclusion*

In the circumstances of this case, the Minister was absolutely right in concluding that the applicant's case was not fit to be referred to the Industrial Court for adjudication. On the facts before him, he was convinced that the applicant's representation was frivolous and vexatious. I am satisfied that the Minister had not committed any jurisdictional error in arriving at his decision. He had carried out his discretion lawfully and acted within his jurisdiction.

D The application for the orders of certiorari and mandamus is, therefore, dismissed with costs.

E *Application dismissed.*

Reported by Mohd Rizal Abidin

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